

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 2238**

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**Introduced by Assembly Member Perea**

February 24, 2012

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An act to amend Sections 56378 and 56430 of the Government Code, to amend ~~Sections~~ *Section* 116326, ~~116760.30, 116760.70, and 116760.90~~ of the Health and Safety Code, and to amend Section 75125 of, and to add Section 75129.5 to, the Public Resources Code, relating to public water systems, ~~and making an appropriation therefor.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 2238, as amended, Perea. Public water systems: drinking water.

Existing law requires the State Department of Public Health to administer programs to fund improvements and expansion of small community water systems using specified priorities. Existing law requires the department to encourage the consolidation of small community water systems that serve disadvantaged communities if consolidation will help the affected agencies and the state meet specified goals. Existing law allows funding of studies regarding the feasibility of consolidating 2 or more community water systems, at least one of which is a small community water system that serves a disadvantaged community. Existing law requires the department to give funding priority to projects involving physical restructuring of 2 or more community water systems into a single, consolidated system when it is shown that the consolidation would further specified goals.

This bill would require the department to promote the consolidation and merger of small community water systems that serve disadvantaged communities, as specified, and would require the studies performed

prior to a construction project to include the feasibility of consolidating or merging community water systems. *This bill would prohibit the department from determining the consolidation or merger to be infeasible if the local agency formation commission (LAFCO) also conducted a study or service review of the project and determined the project was feasible.* This bill would also require the department to give priority to funding projects involving managerial consolidation or merger when the consolidation or merger would further specified goals.

~~Existing law requires local agency formation commissions (LAFCOs) LAFCOs to conduct a service review of the municipal services provided in the county, as specified, and requires the commissions to review all of the agencies that provide the service within a designated geographic area. Existing law permits LAFCOs to assess various alternatives for improving efficiency and affordability of infrastructure and service delivery, as specified, and allows the commissions to include a review of whether the agencies are in compliance with the California Safe Drinking Water Act.~~

~~This bill would require LAFCOs to assess various alternatives for improving efficiency and affordability of infrastructure and service delivery and would require the commissions to include a review of whether the agencies are in compliance with the California Safe Drinking Water Act to also assess various alternatives for improving efficiency and affordability of infrastructure and service delivery for drinking water and wastewater services.~~ By imposing additional duties on local officials, this bill would impose a state-mandated local program.

~~Under existing law, the State Department of Public Health provides grants and revolving fund loans for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Existing law requires the department to administer the Safe Drinking Water State Revolving Fund, which is continuously appropriated for the design and construction of public water systems, as specified.~~

The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative measure, provides funding for safe drinking water, water quality and supply, flood control, natural resource protection, and park improvements. Existing law establishes the Strategic Growth Council and appropriates \$500,000 from the funding provided by the initiative to support the council and its activities. Existing law requires the council to manage

and award grants and loans to support the planning and development of sustainable communities, as specified.

~~This bill would provide that local agency formation commissions intending to fund public water system consolidation, merger, or extension of services projects are eligible for grants and loans from the Safe Drinking Water State Revolving Fund. By providing that continuously appropriated funds may be spent for a new purpose, this bill would make an appropriation.~~ This bill would also provide that LAFCOs intending to fund consolidation, merger, or extension of services projects for the purposes of promoting water conservation and to support the planning and development of sustainable communities, are eligible for funding under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 56378 of the Government Code is  
2     amended to read:  
3     56378. (a) In addition to its other powers, the commission  
4     shall initiate and make studies of existing governmental agencies.  
5     Those studies shall include, but shall not be limited to, inventorying  
6     those agencies and determining their maximum service area and  
7     service capacities. In conducting those studies, the commission  
8     may ask for land use information, studies, and plans of cities,  
9     counties, districts, including school districts, community college  
10    districts, and regional agencies and state agencies and departments.  
11    Cities, counties, districts, including school districts, community  
12    college districts, regional agencies, and state agencies and  
13    departments, shall comply with the request of the commission for  
14    that information and the commission shall make its studies

1 available to public agencies and any interested person. In making  
2 these studies, the commission may cooperate with the county  
3 planning commissions.

4 (b) The commission, or the board of supervisors on behalf of  
5 the commission, may apply for or accept, or both, any financial  
6 assistance and grants-in-aid from public or private agencies or  
7 from the state or federal government or from a local government.  
8 This shall include assistance that would enable a commission that  
9 serves a severely disadvantaged community to meet the long-term  
10 water needs of the community by conducting feasibility studies  
11 of, or providing funding for, the consolidation, merger, or extension  
12 of services of public water systems.

13 SEC. 2. Section 56430 of the Government Code is amended  
14 to read:

15 56430. (a) In order to prepare and to update spheres of  
16 influence in accordance with Section 56425, the commission shall  
17 conduct a service review of the municipal services provided in the  
18 county or other appropriate area designated by the commission.  
19 The commission shall include in the area designated for service  
20 review the county, the region, the subregion, or any other  
21 geographic area as is appropriate for an analysis of the service or  
22 services to be reviewed, and shall prepare a written statement of  
23 its determinations with respect to each of the following:

24 (1) Growth and population projections for the affected area.

25 (2) The location and characteristics of any disadvantaged  
26 unincorporated communities within or contiguous to the sphere  
27 of influence.

28 (3) Present and planned capacity of public facilities, adequacy  
29 of public services, and infrastructure needs or deficiencies including  
30 needs or deficiencies related to sewers, municipal and industrial  
31 water, and structural fire protection in any disadvantaged,  
32 unincorporated communities within or contiguous to the sphere  
33 of influence.

34 (4) Financial ability of agencies to provide services.

35 (5) Status of, and opportunities for, shared facilities.

36 (6) Accountability for community service needs, including  
37 governmental structure and operational efficiencies.

38 (7) Any other matter related to effective or efficient service  
39 delivery, as required by commission policy.

(b) In conducting a service review, the commission shall comprehensively review all of the agencies that provide the identified service or services within the designated geographic area. The commission ~~shall~~ *may* assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to the sphere of influence, including, but not limited to, the consolidation of governmental agencies. *The commission shall comprehensively assess various alternatives for improving efficiency and affordability of infrastructure and service delivery for drinking water and wastewater services unless the commission or executive officer of the commission makes a written determination that the assessment is not reasonable under the circumstances.*

(c) In conducting a service review, the commission ~~shall~~ *may* include a review of whether the agencies under review, including any public water system as defined in Section 116275, are in compliance with the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code). A public water system may satisfy any request for information as to compliance with that act by submission of the consumer confidence or water quality report prepared by the public water system as provided by Section 116470 of the Health and Safety Code.

(d) The commission may request information, as part of a service review under this section, from identified public or private entities that provide wholesale or retail supply of drinking water, including mutual water companies formed pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code, and private utilities, as defined in Section 1502 of the Public Utilities Code.

(e) The commission shall conduct a service review before, or in conjunction with, but no later than the time it is considering an action to establish a sphere of influence in accordance with Section 56425 or 56426.5 or to update a sphere of influence pursuant to Section 56425.

SEC. 3. Section 116326 of the Health and Safety Code is amended to read:

116326. In administering programs to fund improvements and expansions of small community water systems, the department shall do all of the following:

1 (a) Give priority to funding projects in disadvantaged  
2 communities.

3 (b) Promote the consolidation or merger of small community  
4 water systems that serve disadvantaged communities in instances  
5 where consolidation or merger will help at least one of the affected  
6 agencies and the state to meet all of the following goals:

7 (1) Improvement in the quality of water delivered.

8 (2) Improvement in the reliability of water delivery.

9 (3) Reduction in the cost of drinking water for ratepayers.

10 (c) Pursuant to subdivision (b), require that funding for  
11 feasibility studies performed prior to a construction project include  
12 studies of the feasibility of consolidating two or more community  
13 water systems or merging a community water system with a city  
14 water system, ~~when~~ if at least one of the water systems is a small  
15 community water system that serves a disadvantaged community,  
16 unless the department makes a written determination that  
17 consolidation or merger is not feasible under the circumstances.  
18 *The department shall not make a determination of infeasibility if*  
19 *the local agency formation commission conducted a study, pursuant*  
20 *to Section 56378 of the Government Code, or conducted a service*  
21 *review, pursuant to Section 56430 of the Government Code, which*  
22 *found the consolidation or merger feasible.*

23 (d) If it is shown that small community water system  
24 consolidation or merger will further the goals of subdivision (b),  
25 give priority to funding construction projects that involve the  
26 physical restructuring and managerial consolidation of two or more  
27 community water systems or merger of one or more community  
28 water systems, at least one of which is a small community water  
29 system that serves a disadvantaged community, into a single,  
30 consolidated system.

31 ~~SEC. 4. Section 116760.30 of the Health and Safety Code is~~  
32 ~~amended to read:~~

33 ~~116760.30. (a) There is hereby created in the State Treasury~~  
34 ~~the Safe Drinking Water State Revolving Fund for the purpose of~~  
35 ~~implementing this chapter, and, notwithstanding Section 13340 of~~  
36 ~~the Government Code, the fund is hereby continuously~~  
37 ~~appropriated, without regard to fiscal years, to the department to~~  
38 ~~provide, from moneys available for this purpose, grants or~~  
39 ~~revolving fund loans for the design and construction of projects~~  
40 ~~for public water systems that will enable suppliers to meet safe~~

1 drinking water standards, or to fund feasibility studies of, or to  
2 provide funding for, public water system projects pursuant to  
3 Section 56378 of the Government Code. The department shall be  
4 responsible for administering the fund.

5 (b) Notwithstanding Section 10231.5 of the Government Code,  
6 the department shall report at least once every two years to the  
7 policy and budget committees of the Legislature on the  
8 implementation of this chapter and expenditures from the fund.  
9 The report shall describe the numbers and types of projects funded,  
10 the reduction in risks to public health from contaminants in  
11 drinking water provided through the funding of the projects, and  
12 the criteria used by the department to determine funding priorities.  
13 Commencing with reports submitted on or after January 1, 2013,  
14 the report shall include the results of the United States  
15 Environmental Protection Agency's most recent survey of the  
16 infrastructure needs of California's public water systems, the  
17 amount of money available through the fund to finance those needs,  
18 the total dollar amount of all funding agreements executed pursuant  
19 to this chapter since the date of the previous report, the fund  
20 utilization rate, the amount of unliquidated obligations, and the  
21 total dollar amount paid to funding recipients since the previous  
22 report.

23 (c) Notwithstanding any other law, the Controller may use the  
24 moneys in the Safe Drinking Water State Revolving Fund for loans  
25 to the General Fund as provided in Sections 16310 and 16381 of  
26 the Government Code. However, interest shall be paid on all  
27 moneys loaned to the General Fund from the Safe Drinking Water  
28 State Revolving Fund. Interest payable shall be computed at a rate  
29 determined by the Pooled Money Investment Board to be the  
30 current earning rate of the fund from which loaned. This  
31 subdivision does not authorize any transfer that will interfere with  
32 the carrying out of the object for which the Safe Drinking Water  
33 State Revolving Fund was created.

34 SEC. 5. Section 116760.70 of the Health and Safety Code is  
35 amended to read:

36 116760.70. (a) The department, after public notice and hearing,  
37 shall, from time to time, establish a priority list of proposed projects  
38 to be considered for funding under this chapter. In doing so, the  
39 department shall determine if improvement, rehabilitation, merger,  
40 consolidation, or extension of services of the public water system

1 is necessary to provide pure, wholesome, and potable water in  
2 adequate quantity and at sufficient pressure for health, cleanliness,  
3 and other domestic purposes. The department shall establish criteria  
4 for placing public water systems on the priority list for funding  
5 that shall include criteria for priority list categories. Priority shall  
6 be given to projects that meet all of the following requirements:

7 (1) Address the most serious risk to human health.

8 (2) Are necessary to ensure compliance with requirements of  
9 Chapter 4 (commencing with Section 116270) including  
10 requirements for filtration.

11 (3) Assist systems most in need on a per household basis  
12 according to affordability criteria.

13 (b) The department may, in establishing a new priority list,  
14 merge those proposed projects from the existing priority list into  
15 the new priority list.

16 (c) In establishing the priority list, the department shall consider  
17 the system's implementation of an ongoing source water protection  
18 program or wellhead protection program.

19 (d) In establishing the priority list categories and the priority  
20 for funding projects, the department shall carry out the intent of  
21 the Legislature pursuant to subdivisions (c) to (h), inclusive, of  
22 Section 116760.10 and do all of the following:

23 (1) Give priority to upgrade an existing system to meet drinking  
24 water standards.

25 (2) After giving priority pursuant to paragraph (1), consider  
26 whether the applicant has sought other funds when providing  
27 funding for a project to upgrade an existing system and to  
28 accommodate a reasonable amount of growth.

29 (e) Consideration of an applicant's eligibility for funding shall  
30 initially be based on the priority list in effect at the time the  
31 application is received and the project's ability to proceed. If a  
32 new priority list is established during the time the application is  
33 under consideration, but before the applicant receives a letter of  
34 commitment, the department may consider the applicant's  
35 eligibility for funding based on either the old or new priority list.

36 (f) The department may change the ranking of a specific project  
37 on the priority lists at any time following the publication of the  
38 list if information, that was not available at the time of the  
39 publication of the list, is provided that justifies the change in the  
40 ranking of the project.



1     ~~(g) The department shall provide one or more public hearings~~  
2     ~~on the Intended Use Plan, the priority list, and the criteria for~~  
3     ~~placing public water systems on the priority list. The department~~  
4     ~~shall provide notice of the Intended Use Plan, criteria, and priority~~  
5     ~~list not less than 30 days before the public hearing. The Intended~~  
6     ~~Use Plan, criteria, and priority list shall not be subject to the~~  
7     ~~requirements of Chapter 3.5 (commencing with Section 11340) of~~  
8     ~~Part 1 of Division 3 of Title 2 of the Government Code. The~~  
9     ~~department shall conduct duly noticed public hearings and~~  
10    ~~workshops around the state to encourage the involvement and~~  
11    ~~active input of public and affected parties, including, but not limited~~  
12    ~~to, water utilities, local government, public interest, environmental,~~  
13    ~~and consumer groups, public health groups, land conservation~~  
14    ~~interests, health care providers, groups representing vulnerable~~  
15    ~~populations, groups representing business and agricultural interests,~~  
16    ~~and members of the general public, in the development and periodic~~  
17    ~~updating of the Intended Use Plan and the priority list.~~

18    ~~(h) The requirements of this section do not constitute an~~  
19    ~~adjudicatory proceeding as defined in Section 11405.20 of the~~  
20    ~~Government Code and Section 11410.10 of the Government Code~~  
21    ~~is not applicable.~~

22    ~~SEC. 6. Section 116760.90 of the Health and Safety Code is~~  
23    ~~amended to read:~~

24    ~~116760.90. (a) The department shall not approve an application~~  
25    ~~for funding unless the department determines that the proposed~~  
26    ~~study or project is necessary to enable the applicant to meet safe~~  
27    ~~drinking water standards, and is consistent with an adopted~~  
28    ~~countywide plan, if any, or is necessary to assist a local agency~~  
29    ~~formation commission provide long-term water needs pursuant to~~  
30    ~~Section 56378 of the Government Code. The department may~~  
31    ~~refuse to fund a study or project if it determines that the purposes~~  
32    ~~of this chapter may more economically and efficiently be met by~~  
33    ~~means other than the proposed study or project. The department~~  
34    ~~shall not approve an application for funding a project with a~~  
35    ~~primary purpose to supply or attract future growth. The department~~  
36    ~~may limit funding to costs necessary to enable suppliers to meet~~  
37    ~~primary drinking water standards, as defined in Chapter 4~~  
38    ~~(commencing with Section 116270).~~

~~(b) With respect to applications for funding of project design and construction, the department shall also determine all of the following:~~

~~(1) Upon completion of the project, the applicant will be able either to supply water that meets safe drinking water standards or meet the long-term water needs of the community.~~

~~(2) The project is cost effective.~~

~~(3) If the entire project is not to be funded under this chapter, the department shall specify which costs are eligible for funding.~~

~~(c) In considering an application for funding a project that meets all other requirements of this chapter and regulations, the department shall not be prejudiced by the applicant initiating the project prior to the department approving the application for funding. Preliminary project costs that are otherwise eligible for funding pursuant to the provisions of this chapter shall not be ineligible because the costs were incurred by the applicant prior to the department approving the application for funding. Construction costs that are otherwise eligible for funding pursuant to the provisions of this chapter shall not be ineligible because the costs were incurred after the approval of the application by the department but prior to the department entering into a contract with the applicant pursuant to Section 116761.50.~~

~~SEC. 7.~~

~~SEC. 4.~~ Section 75125 of the Public Resources Code is amended to read:

75125. The council shall do all of the following:

(a) Identify and review activities and funding programs of member state agencies that may be coordinated to improve air and water quality, improve natural resource protection, increase the availability of affordable housing, improve transportation, meet the goals of the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), encourage sustainable land use planning, and revitalize urban and community centers in a sustainable manner. At a minimum, the council shall review and comment on the five-year infrastructure plan developed pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Division 3 of the Government Code and the State Environmental Goals and Policy Report developed pursuant to Section 65041 of the Government Code.

1 (b) Recommend policies and investment strategies and priorities  
2 to the Governor, the Legislature, and to appropriate state agencies  
3 to encourage the development of sustainable communities, such  
4 as those communities that promote equity, strengthen the economy,  
5 protect the environment, and promote public health and safety,  
6 consistent with subdivisions (a) and (c) of Section 75065.

7 (c) Provide, fund, and distribute data and information to local  
8 governments and regional agencies that will assist in developing  
9 and planning sustainable communities.

10 (d) Manage and award grants and loans to support the planning  
11 and development of sustainable communities, pursuant to Sections  
12 75127, 75128, 75129, and 75129.5. To implement this subdivision,  
13 the council may do all of the following:

14 (1) Develop guidelines for awarding financial assistance,  
15 including criteria for eligibility and additional consideration.

16 (2) Develop criteria for determining the amount of financial  
17 assistance to be awarded. The council shall award a revolving loan  
18 to an applicant for a planning project, unless the council determines  
19 that the applicant lacks the fiscal capacity to carry out the project  
20 without a grant. The council may establish criteria that would allow  
21 the applicant to illustrate an ongoing commitment of financial  
22 resources to ensure the completion of the proposed plan or project.

23 (3) Provide for payments of interest on loans made pursuant to  
24 this article. The rate of interest shall not exceed the rate earned by  
25 the Pooled Money Investment Board.

26 (4) Provide for the time period for repaying a loan made  
27 pursuant to this article.

28 (5) Provide for the recovery of funds from an applicant that fails  
29 to complete the project for which financial assistance was awarded.  
30 The council shall direct the Controller to recover funds by any  
31 available means.

32 (6) Provide technical assistance for application preparation.

33 (7) Designate a state agency or department to administer  
34 technical and financial assistance programs for the disbursing of  
35 grants and loans to support the planning and development of  
36 sustainable communities, pursuant to Sections 75127, 75128,  
37 75129, and 75129.5.

38 (e) (1) No later than July 1, 2010, and every year thereafter,  
39 provide a report to the Legislature that shall include, but is not  
40 limited to, all of the following:

- 1 (A) A list of applicants for financial assistance.  
2 (B) Identification of which applications were approved.  
3 (C) The amounts awarded for each approved application.  
4 (D) The remaining balance of available funds.  
5 (E) A report on the proposed or ongoing management of each  
6 funded project.  
7 (F) Any additional minimum requirements and priorities for a  
8 project or plan proposed in a grant or loan application developed  
9 and adopted by the council pursuant to subdivision (c) of Section  
10 75126.

11 (2) A report submitted pursuant to paragraph (1) shall be  
12 submitted in accordance with Section 9795 of the Government  
13 Code.

14 ~~SEC. 8:~~

15 *SEC. 5.* Section 75129.5 is added to the Public Resources Code,  
16 to read:

17 75129.5. To support the planning and development of  
18 sustainable communities, the council shall manage and award  
19 financial assistance to a city, county, local area formation  
20 commission, special district, nonprofit organization, or entity  
21 formed pursuant to Chapter 5 (commencing with Section 6500)  
22 of Division 7 of Title 1 of the Government Code, or a local agency  
23 formation commission formed pursuant to Chapter 4 (commencing  
24 with Section 56425) of Division 7 of Title 1 of the Government  
25 Code, if at least one of the parties to the joint powers agreement  
26 qualifies as an eligible applicant, for the preparation, planning,  
27 and implementation of a public water system consolidation, merger,  
28 or extension of services project for the purposes of promoting  
29 water conservation. The financial assistance provided pursuant to  
30 this section shall be funded from moneys made available pursuant  
31 to subdivision (c) of Section 75065. The council shall give priority  
32 to funding projects proposed by an economically disadvantaged  
33 community.

34 ~~SEC. 9:~~

35 *SEC. 6.* If the Commission on State Mandates determines that  
36 this act contains costs mandated by the state, reimbursement to  
37 local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division  
2 4 of Title 2 of the Government Code.

O